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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

MOROCCANOIL, INC., a California
corporation

Plaintiff,

v.

AVON PRODUCTS, INC., a New
York corporation and DOES 1 through
10, Inclusive

Defendants.

CASE No.

COMPLAINT FOR:

1. FEDERAL TRADEMARK
INFRINGEMENT
[15 U.S.C. § 1114]
2. FEDERAL TRADEMARK
INFRINGEMENT AND
UNFAIR COMPETITION
[15 U.S.C. § 1125(a)]
3. COMMON LAW TRADEMARK
INFRINGEMENT AND UNFAIR
COMPETITION
4. STATUTORY UNFAIR
COMPETITION AND
FALSE ADVERTISING
[B&P CODE §§ 17200 & 17500]

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. In January 2007, Moroccanoil introduced Moroccanoil Oil Treatment, a
 3 unique hair care product featuring argan oil to revitalize and replenish the hair.
 4 Moroccanoil Oil Treatment was a tremendous success and garnered recognition and
 5 praise from celebrities, runway stylists, and consumers across the United States.
 6 Moroccanoil expanded its product line to include a range of hair care and body care
 7 products, each packaged and advertised using the distinctive trademarks and trade dress
 8 consumers uniquely associate with Moroccanoil. Moroccanoil and its high-quality
 9 product line (the “Moroccanoil Products”) are held in high esteem by professional
 10 stylists and consumers alike.

11

12 2. Seeking to capitalize on Moroccanoil’s success, Avon has introduced a
 13 line of hair treatment products purportedly containing argan oil (the “Avon
 14 Products”) under the name “Moroccan Argan Oil,” which Avon sells in packaging
 15 that is intentionally and deceptively similar to Moroccanoil’s. The Avon Products
 16 infringe Moroccanoil’s trademarks and trade dress and create confusion among
 17 consumers.

18

19 **JURISDICTION AND VENUE**

20 3. This action arises under and this Court has original jurisdiction pursuant to
 21 15 U.S.C. § 1121 (Original Jurisdiction – Trademarks), 28 U.S.C. § 1331 (Federal
 22 Question), 28 U.S.C. § 1338(a) (Original Jurisdiction – Patents and Trademarks), 28
 23 U.S.C. § 1332 (Diversity of Citizenship), 28 U.S.C. § 1338(b) (Original Jurisdiction -
 24 Unfair Competition) and 28 U.S.C. § 1367 (Supplemental Jurisdiction).

25

26 4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2)
 27 because a substantial part of the events giving rise to the claims occurred in this judicial
 28

1 district, and because Defendant is subject to the Court's personal jurisdiction with
 2 respect to this action. 28 U.S.C. § 1331(c)(2).

3

4

THE PLAINTIFF

5. Moroccanoil, Inc. is a California corporation in good standing with the
 6 California Secretary of State. Its principal place of business is located in Los Angeles
 7 County. The term "Moroccanoil" as used herein shall include Moroccanoil, Inc., and
 8 its predecessors.

9

10

DEFENDANTS

11. On information and belief, Defendant Avon Products, Inc. ("Defendant" or
 12 "Avon") is a New York corporation with a principal place of business located at 777
 13 Third Avenue, New York, NY 10017. Avon markets and sells its products
 14 internationally, including in Los Angeles County, California.

15

16. On information and belief there are other individuals who make, obtain,
 17 distribute, supply and sell products in violation of law, and violate Moroccanoil's rights
 18 as alleged herein, but Moroccanoil is ignorant of their true identity or complete role in
 19 the alleged conduct and therefore sues them by the fictitious names DOES 1 to 10.
 20 Moroccanoil is informed and believes that each of the defendants designated as a Doe is
 21 liable in some manner for the acts and omissions, damages and injuries of which
 22 Moroccanoil alleges in this Complaint. Moroccanoil will seek to amend this Complaint
 23 to state the true identities of Does 1 through 10 when ascertained. Avon and the Doe
 24 Defendants are referred to collectively as "Defendants."

25

26. On information and belief each of the Defendants were at all relevant times
 27 acting to the fullest extent recognized by law as the agent, employee or co-conspirator
 28 of each of the other Defendants, and that in committing the acts and omissions alleged

1 herein and causing the damage and injuries alleged, were acting within the scope of
2 such agency, employment or conspiracy. The Defendants have committed acts in
3 furtherance of the conspiracy, have given aid and encouragement to their co-
4 conspirators and have ratified and adopted the acts of their co-conspirators.

5

6 9. On information and belief there exists, and at all times mentioned there
7 existed, a unity of interests and ownership between individual Defendants and business
8 entity defendants such that any individuality and separateness between the individual
9 and businesses never existed or has ceased to exist, and each Defendant is in each
10 instance the alter ego of the other Defendants who control all such entities. To adhere
11 to the fiction of the Defendant entities as having existence as separate and distinct from
12 the individual Defendants or from those with them and who owned and controlled them
13 would permit an abuse of the corporate and other entity privileges, would sanction
14 fraud, and would promote injustice.

15

16 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

17

18

THE MOROCCANOIL PRODUCTS

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10. Moroccanoil distributes a line of hair care products utilizing
20 Moroccanoil's distinctive trademarks and trade dress. A true and correct color
21 photograph of Moroccanoil's flagship Moroccanoil Oil Treatment product is shown
22 below.

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Moroccanoil Oil Treatment



11. The Moroccanoil Products include Moroccanoil Oil Treatment, Hair
12. Masks (Intense Hydrating Mask, Restorative Hair Mask, Weightless Hydrating Mask),
13. Hair Conditioners (Hydrating, Moisture Repair and Extra Volume) and Shampoos
14. (Clarifying, Hydrating, Moisture Repair and Extra Volume).

20 12. Moroccanoil Products are sold online through Moroccanoil's website, and
21 in professional salons and beauty schools.

MOROCCANOIL'S TRADEMARKS AND TRADE DRESS

24 13. Moroccanoil Products bear one or more trademarks (“Moroccanoil
25 Trademarks”) which are federally registered in Class 3 on the principal register of the
26 United States Patent and Trademark Office (“USPTO”), including:

28 (a) the word "Moroccanoil" - USPTO Registration No. 3,478,807;

1 (b) "M Moroccanoil Design" - with the word Moroccanoil in white
2 vertical lettering next to the letter M in copper orange on a turquoise blue background,
3 USPTO Registration No. 3,684,910; and

5 (c) "M Moroccanoil Design" - with the word Moroccanoil in white
6 horizontal lettering through the letter M in copper orange on a turquoise blue
7 background, USPTO Registration No. 3,684,909.

9 14. Since 2007, Moroccanoil has continuously used the Moroccanoil
10 Trademarks in commerce in the United States. As a result of its success, Moroccanoil
11 has built goodwill and value in the Moroccanoil Trademarks such that consumers
12 associate them exclusively with Moroccanoil.

14 15. The packaging in which Moroccanoil sells its products (the “Moroccanoil
15 Trade Dress”) has acquired secondary meaning and has become exclusively associated
16 with Moroccanoil in the eyes of consumers. The Moroccanoil Trade Dress is the
17 overall appearance of the Moroccanoil Products’ packaging and advertising, including
18 but not limited to each of the following elements individually and in combination with
19 one another: a distinctive turquoise blue color; white lettering, graphics and background
20 design elements on a turquoise blue background; and an amber glass bottle packaged in
21 a rectangular turquoise blue box. The Moroccanoil Trade Dress is non-functional and
22 has been in use in commerce since at least as early as January 2007.

DEFENDANTS' INFRINGING PRODUCTS

25 16. The packaging of the Avon Products infringes the Moroccanoil
26 Trademarks and misappropriates the Moroccanoil Trade Dress. The turquoise blue
27 used with the Avon Products is virtually identical to Moroccanoil's distinctive

1 turquoise blue. All products in the Avon Products line feature the words “Moroccan
2 Argan Oil” prominently in the center of the product package.

4 17. Moreover, Avon's Leave-in Treatment ("Avon Moroccan Argan Oil
5 Treatment") is packaged in a golden glass bottle which is enclosed in a turquoise blue
6 box. The Avon Moroccan Argan Oil Treatment bottle uses turquoise blue design
7 features, including a turquoise blue bar across the top of the bottle with white text, a
8 turquoise blue droplet graphic, and a turquoise blue cap. The Avon Moroccan Argan
9 Oil Treatment blatantly copies the distinctive, source-identifying features of
10 Moroccanoil's flagship Moroccanoil Oil Treatment product. Below is a true and
11 correct image of the Avon Moroccan Argan Oil Treatment.

Avon Moroccan Argan Oil Treatment



1 18. The Avon Products include Avon Moroccan Argan Oil Treatment,
2 Moroccan Argan Oil Mask, Moroccan Argan Oil Conditioner and Moroccan Argan Oil
3 Shampoo.

5 19. On information and belief, the Avon Products are sold online as well as
6 through Avon sales representatives.

8 20. The similarities between the Moroccanoil Products and the Avon Products
9 are far too striking to be mere coincidence. Defendants willfully and intentionally
10 misappropriate the Moroccanoil Trademarks and the Moroccanoil Trade Dress.

15 | 21. Moroccanoil incorporates and realleges paragraphs 1 through 20 of this
16 | Complaint.

18 22. Moroccanoil owns the federally registered Moroccanoil Trademarks,
19 including Registration No. 3,478,807 for MOROCCANOIL. Defendants have
20 infringed this trademark by using “Moroccan Argan Oil” for advertising, distribution
21 and sale of the Ayon Products without Moroccanoil’s authorization.

23 23. Defendants' use of "Moroccan Argan Oil" and their sale and advertising of
24 the Avon Products have a substantial effect on interstate commerce, have caused
25 consumer confusion, and are likely to continue to cause consumer confusion and to
26 deceive the public into believing that the Avon Products originate from and are
27 authorized by Moroccanoil.

1 24. On information and belief, Defendants have committed these acts of
2 infringement with the intent to cause confusion and mistake and to deceive the public
3 into believing that Moroccanoil makes, sponsors or endorses the Avon Products.

4

5 25. As a direct and proximate result of Defendants' unlawful acts alleged
6 herein, including infringement of the Moroccanoil Trademarks, Moroccanoil has
7 suffered and will continue to suffer injury to its business, goodwill and property.

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9 26. As a proximate result of Defendants' wrongful conduct, Defendants have
10 been unjustly enriched while Moroccanoil has suffered damages of a nature and in an
11 amount according to proof at trial.

12

13 27. Moroccanoil demands and is entitled to an accounting from each
14 Defendant, including all information necessary to permit Moroccanoil to determine the
15 gains, profits and advantages that Defendants have obtained by reason of their wrongful
16 conduct described herein.

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18 28. Moroccanoil has no adequate remedy at law. Defendants' acts and
19 omissions as alleged herein will engender the need for a multiplicity of judicial
20 proceedings and will cause damages to Moroccanoil that are difficult, if not impossible,
21 to measure. Unless Defendants are preliminarily and permanently enjoined from
22 committing the unlawful acts alleged including infringement of the Moroccanoil
23 Trademarks and Moroccanoil Trade Dress, Moroccanoil will continue to suffer
24 irreparable harm.

25

26 29. On information and belief, Defendants, in engaging in the conduct
27 described herein, knowingly, intentionally and willfully intended to trade on the
28 reputation and goodwill of Moroccanoil, the Moroccanoil Trademarks, the Moroccanoil

1 Trade Dress and the Moroccanoil Products, and to cause injury to Moroccanoil. As
2 such, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a) and
3 damages should be trebled and attorneys' fees awarded.

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5 **SECOND CLAIM FOR RELIEF**
6 **FOR FEDERAL TRADEMARK INFRINGEMENT AND**
7 **UNFAIR COMPETITION UNDER 15 U.S.C. § 1125**
8 **(AGAINST ALL DEFENDANTS)**

9 30. Moroccanoil incorporates and realleges paragraphs 1 through 20 of this
10 Complaint.

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12 31. The Moroccanoil Trade Dress has acquired secondary meaning and is
13 uniquely associated with Moroccanoil in the minds of consumers.

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15 32. Defendants' use of a virtually identical turquoise blue and other similar
16 trade dress elements for the packaging of Avon Products infringes the Moroccanoil
17 Trade Dress by confusing and deceiving consumers as to the source or sponsorship of
18 the Avon Products. Defendants' conduct constitutes infringement of Moroccanoil's
19 unregistered trademarks and unfair competition in violation of 15 U.S.C. § 1125(a).

20

21 33. Defendants' acts have caused and will continue to cause Moroccanoil to
22 suffer injury to its business, goodwill and property.

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24 34. As a proximate result of Defendants' wrongful conduct, Defendants have
25 been unjustly enriched while Moroccanoil has suffered damages of a nature and in an
26 amount according to proof at trial.

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1 35. Moroccanoil demands and is entitled to an accounting from each
2 Defendant, including all information necessary to permit Moroccanoil to determine the
3 gains, profits and advantages that Defendants have obtained by reason of their wrongful
4 conduct described herein.

6 36. Moroccanoil has no adequate remedy at law. Defendants' acts and
7 omissions as alleged herein will engender the need for a multiplicity of judicial
8 proceedings and will cause damages to Moroccanoil that are difficult, if not impossible,
9 to measure. Unless Defendants are preliminarily and permanently enjoined from
10 committing the unlawful acts alleged including infringement of the Moroccanoil
11 Trademarks and Moroccanoil Trade Dress, Moroccanoil will continue to suffer
12 irreparable harm.

13
14 37. On information and belief, Defendants, in engaging in the conduct
15 described herein, knowingly, intentionally and willfully intended to trade on the
16 reputation and goodwill of Moroccanoil, the Moroccanoil Trademarks, the Moroccanoil
17 Trade Dress and the Moroccanoil Products, and to cause injury to Moroccanoil. As
18 such, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a) and
19 damages should be trebled and attorneys' fees awarded.

THIRD CLAIM FOR RELIEF
COMMON LAW TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

25 | 38. Moroccanoil incorporates and realleges paragraphs 1 through 20 of this
26 | Complaint.

1 39. Defendants' actions constitute infringement of Moroccanoil's common
2 law rights in the Moroccanoil Trademarks and the Moroccanoil Trade Dress, and will
3 confuse and deceive the public concerning the source, affiliation or sponsorship of the
4 Avon Products.

5
6 40. In performing the acts and unfair business practices alleged, Defendants
7 are engaging in unlawful and unfair competition in violation of Moroccanoil's rights.

8
9 41. On information and belief, Defendants' acts and omissions as alleged
10 herein were committed knowingly, intentionally and willfully with the intent to trade on
11 Moroccanoil's goodwill in the Moroccanoil Products, the Moroccanoil Trademarks and
12 the Moroccanoil Trade Dress.

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14 42. Moroccanoil demands and is entitled to an accounting from each
15 Defendant, including all information necessary to permit Moroccanoil to determine the
16 gains, profits and advantages that Defendants have obtained by reason of their wrongful
17 conduct described herein.

18
19 43. Moroccanoil has no adequate remedy at law. Defendants' acts and
20 omissions as alleged herein will engender the need for a multiplicity of judicial
21 proceedings and will cause damages to Moroccanoil that are difficult, if not impossible,
22 to measure. Unless Defendants are preliminarily and permanently enjoined from
23 committing the unlawful acts alleged including infringement of the Moroccanoil
24 Trademarks and Moroccanoil Trade Dress, Moroccanoil will continue to suffer
25 irreparable harm.

26
27 44. On information and belief, Defendants, in engaging in the conduct
28 described herein, knowingly, intentionally and willfully intended to trade on the

1 reputation and goodwill of Moroccanoil, the Moroccanoil Trademarks, the Moroccanoil
2 Trade Dress and the Moroccanoil Products, and to cause injury to Moroccanoil.
3 Moroccanoil should be awarded punitive damages.

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5 **FOURTH CLAIM FOR RELIEF**
6 **FOR STATUTORY UNFAIR COMPETITION**
7 **AND FALSE ADVERTISING**
8 **UNDER CAL. BUS. & PROF. CODE §§ 17200 AND 17500**
9 **(AGAINST ALL DEFENDANTS)**

10 45. Moroccanoil incorporates and realleges paragraphs 1 through 20 of this
11 Complaint.

12

13 46. Defendants' actions constitute infringement of Moroccanoil's common
14 law rights in the Moroccanoil Trademarks and Moroccanoil Trade Dress.

15

16 47. Defendants' unfair business practices, acts of infringement and misleading
17 advertising practices as herein alleged are in violation of California Business and
18 Professions Code, Section 17200, *et seq.*, and California Business and Professions
19 Code, Section 17500, *et seq.*

20

21 48. In performing the acts and unfair business practices alleged, Defendants
22 are engaging in unlawful and unfair competition in violation of Moroccanoil's rights.
23 Defendants have obtained revenue and profit by their acts of unfair competition and
24 they should be ordered to disgorge all such revenue and profit. Defendants will
25 continue such unfair and fraudulent business practices unless and until they are
26 restrained.

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1 49. Moroccanoil has no adequate remedy at law. Defendants' acts and
2 omissions as alleged herein will engender the need for a multiplicity of judicial
3 proceedings and will cause damages to Moroccanoil that are difficult, if not impossible,
4 to measure. Unless Defendants are preliminarily and permanently enjoined from
5 committing the unlawful acts alleged including infringement of the Moroccanoil
6 Trademarks and Moroccanoil Trade Dress, Moroccanoil will continue to suffer
7 irreparable harm.

8

9

PRAYER

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WHEREFORE, Moroccanoil prays for judgment as follows:

12

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1. For preliminary and permanent injunctive relief against all Defendants,
14 and each of them, and their officers, agents, attorneys, representatives and assigns, and
15 all persons acting in active concert or participation with them, from doing any of the
16 following acts, either directly or indirectly, and from doing any act prefatory to the
17 prohibited acts:

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(a) Infringing any trademark, trade dress or other intellectual property
20 right owned or controlled by Moroccanoil;

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(b) Causing a likelihood of confusion, deception, or mistake as to the
23 source, nature, or quality of Moroccanoil's goods or causing confusion, deception or
24 mistake as to the source, nature or quality of Defendants' goods;

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(c) Using any false designation of origin or false representation
27 concerning any of Defendants' goods; and

28

5 2. For an order directing Defendants, and each of them, to file with this Court
6 and serve on Moroccanoil within 30 days after service of an injunction, a report in
7 writing under oath, setting forth in detail the manner and form in which Defendants
8 have complied with the injunction;

10 3. For an order requiring Defendants, and each of them, to deliver to
11 Moroccanoil all products, literature, advertising, and other material bearing any
12 infringing trademarks or a use of any trademark constituting federal, California state or
13 common law unfair competition;

15 4. For an order requiring Defendants to account for all sales and transfers of
16 any of the Avon Products, including an order that they submit to Moroccanoil
17 immediately all records of all purchases, sales, and other materials pertaining to the
18 acquisition and distribution of the Avon Products;

20 5. For an accounting from each Defendant of all profits, monies and
21 advantages that Defendants have obtained by reason of their wrongful conduct;

23 6. For damages in an amount according to proof at trial and trebled as
24 permitted by law;

26 7. For an order requiring that all gains, profits, or advantages derived by
27 Defendants by their wrongful conduct be disgorged to Moroccanoil to the fullest extent
28 allowed by law;

1 8. For punitive and exemplary damages in an amount sufficient to punish
2 defendants and deter such conduct in the action;

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4 9. For attorneys' fees;

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6 10. For costs; and

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8 For such other and further relief as the Court deems just and proper.

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10 Dated: October 9, 2012

William C. Conkle
Amy E. Burke, members of
CONKLE, KREMER & ENGEL
Professional Law Corporation

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By:

William C. Conkle
Attorneys for Plaintiff Moroccanoil, Inc.



DEMAND FOR JURY TRIAL

Plaintiff Moroccanoil, Inc. demands trial by jury of all issues triable to a jury.

Dated: October 9, 2012

William C. Conkle
Amy E. Burke, members of
CONKLE, KREMER & ENGEL
Professional Law Corporation

By:

William C. Conkle
Attorneys for Plaintiff Moroccanoil, Inc.